

# General Purchasing Conditions of

## Helmholtz-Zentrum Geesthacht Zentrum für Material- und Küstenforschung GmbH

As at 30 July 2020

### 1. General information

Unless otherwise agreed in writing between Helmholtz-Zentrum Geesthacht Zentrum für Material- und Küstenforschung GmbH ("client") and the contractor, these General Purchasing Conditions apply to all deliveries and services commissioned by the client. By submitting an offer, by confirming an order, and by accepting or executing an order, the contractor accepts these General Purchasing Conditions. All other general terms and conditions of the contractor only apply if and insofar as these have been expressly accepted in writing. This also applies if the contractor refers to its general terms and conditions; in this case, an objection by the client is not required. In all documents, including invoices, the order number, logo, and date of the client must be specified. The client stores and processes personal data in an automated procedure (in accordance with § 33 BDSG (German Federal Data Protection Act)).

### 2. Offer, order, order confirmation

The offer is to be submitted to the client free of charge and without obligation. The contractor must adhere to the request or tender pertaining to quantity, quality, and design, and, in the event of a deviation, expressly point this out to the client. The contractor is generally bound to its offer for 30 days, unless a longer period has been agreed. The order must be in writing to be binding. Verbal agreements are only valid if the client confirms them in writing. Orders must be confirmed immediately in writing by the contractor. If the contractor does not accept the order in writing within 10 working days of receipt, the client is entitled to cancel the order.

### 3. Prices

The agreed prices are fixed prices, not including statutory VAT, and the items are to be delivered to the point of use (unloaded), including packaging and other ancillary costs. Unless otherwise agreed, freight and packaging costs are to be paid by the contractor and specified separately in the invoices. Price escalation clauses are only permitted in exceptional cases, even with longer delivery times. If a price escalation clause is requested for delivery periods of more than 18 months, material, wages, and fixed costs are to be broken down proportionally in the offer and the calculation bases are to be specified. When determining the prices, the provisions of Regulation PR No. 30/53 on prices for public contracts, in conjunction with the principles for price determination based on total production costs (LSP), are to be applied. By accepting the order, the contractor agrees to a pricing review by the Federal Ministry of Education and Research, or its appointee.

### 4. Execution of the contract, compliance with provisions

The contractor undertakes to comply with the relevant statutory and official provisions and requirements when fulfilling the contract. The delivery or service must comply with all regulations pertaining to safety, occupational safety, accident prevention, the relevant standards, DIN, VDE, and other regulations, as well as technical regulations, among others, GPSG, VDE, TR, and AD regulations. Furthermore, the delivered machines and/or safety components, pressure equipment in the sense of the PED, or electronic and electrical equipment must have the CE conformity marking (CE marking), the declaration of conformity, as well as an operating manual and other mandatory markings. Protective measures and conformity markings required according to such regulations must be taken into account when calculating the costs, and are included in the scope of delivery, even if they are not specified separately in orders, inquiries, or tenders from the client. If the contractor has reservations about the type of execution desired by the client, the contractor must immediately notify the client thereof in writing. All documents required for acceptance, operation, maintenance, and repairs (plans, test reports, factory certification, drawings, operating instructions, etc.) must be supplied by the contractor free of charge and, if necessary, in a form that can be reproduced. If the contractor commissions a subcontractor, this requires the written consent of the client.

### 5. Delivery periods, delay

The agreed delivery dates are binding. Decisive for the adherence to the delivery date or the delivery period is the receipt of flawless goods at the point of receipt or use, specified by the client, or the acceptance of the delivery or service by the client. If delays are to be expected, the contractor must immediately notify the client thereof in writing, stating the reasons and the presumed duration.

### 6. Rights of information and inspection

The client and its commissioned agents are entitled to get information from the contractor about the contractual execution of the delivery during the contractor's operating hours, to partake in factory inspections, and to carry out tests. The cost of the tests arranged by the client are borne by the client, insofar as the personnel or materials used to carry out the tests are provided by the client. If the agreed inspection fails for reasons for which the contractor is responsible and must thus be repeated, the total costs of the repeat inspection will be borne by the contractor. The contractor will oblige its suppliers and subcontractors in writing to ensure that the inspection rights stipulated in this section are also exercised by them. The inspections do not release the contractor from its liability for material defects and general liability.

### 7. Contract amendment

The client may request changes to the delivery item or the service even after the contract has been concluded, insofar as this is reasonable for the contractor. Amendments which affect the prices, delivery times, or other conditions must be made in writing in accordance with Section 2 of these General Purchasing Conditions.

### 8. Dispatch and customs

A notice of dispatch must be sent to the client in good time before the delivery items are dispatched. A delivery note must be enclosed with the delivery. For deliveries abroad which entail customs, the contractor must contact the client in good time with regard to customs and import processing. The contractor specifies the following in the order confirmation

- o Customs tariff number
- o ECCN US number
- o COO (Country of Origin) - country of commercial policy

### 9. Acceptance

If the delivery or service has been carried out in accordance with the conditions stipulated in the contract, it will be accepted. If a trial operation is planned, the acceptance will take place by means of a joint acceptance report after a flawless trial operation. The client acquires unrestricted ownership of the delivery item or service after handover and acceptance; the same applies to the documents supplied by the contractor (Section 4).

### 10. Ownership rights, confidentiality

The contractor's deliveries and services are carried out without retention of title. The client acquires unlimited ownership of the delivery or service item upon acceptance; the same applies to the documents supplied by the contractor (Section 4, sentence 6). If the order is associated with a development, the client acquires sole ownership of the development item, including any existing property rights or software rights, upon acceptance of the service. By handing over the item or service, the contractor declares that it is fully authorised to dispose and that no third-party rights exist. All provided materials remain the property of the client. They are to be labelled as such and to be stored, identified, and managed separately. If provided materials are processed, remodelled, combined with other items, or mixed, the client acquires sole ownership of the new items. The contractor stores these items for the client free of charge. All ownership rights and copyrights of the client's documents, which are given to the contractor, remain the property of the client. Upon request, the documents are to be handed over immediately, including all copies or reproductions. The client's documents may only be used for the purposes specified in the contract and may only be released to third parties with the express written consent of the client. If the client provides the contractor with technical documents (e.g. construction drawings and descriptions), these are to be treated confidentially by the contractor and may only be disclosed to employees who have been obligated by the contractor to treat said documents confidentially. They may not be used commercially or subjected to industrial property right applications. In the event of violations of the aforementioned conditions, the contractor is liable to the client for all damages.

### 11. Invoicing and payment

Invoices are essentially to be submitted to HZG, as the Principal, in digital form. Invoices must be submitted in a single copy and must meet statutory requirements. Unless otherwise agreed, payments are made either within 14 days with a 2% discount or net after 30 days. In the event of faulty deliveries or services, the client is entitled to withhold payment in full or in part until the delivery or service has been rendered properly. Generally, payments are not made in advance and in instalments. If an instalment payment has been expressly agreed between the client and the contractor, which deviates from these General Purchasing Conditions, payments will only be made against an unlimited down payment guarantee, which is acceptable for the client, in the amount of one instalment plus statutory VAT.

### 12. Liability for material defects and defects of title

The contractor is liable in accordance with the statutory provisions for liability for material defects and defects of title. The contractor guarantees the thorough and proper fulfilment of the contract, in particular compliance with the defined specifications and other execution provisions of the client, in accordance with the latest state of science and technology, as well as the quality and expediency of the delivery with regard to material, construction, and execution – and the documents accompanying the delivery (drawings, plans, among others). The defined specifications apply as contractually assured and guaranteed properties of the delivery item or service. Provisions of §§ 633 paras 2 to 639 BGB (German Civil Code) also apply to purchase orders and work delivery orders; at its discretion, the client can also exercise its rights in accordance with §§ 459 et seqq. BGB. The client will notify the contractor immediately in writing if there are any defects in the delivery/service as soon as they are determined in the ordinary course of business, but at the latest within 8 calendar days after the client receives the delivery. The contractor provides a guarantee for delivered replacement parts and repairs to the same extent that it does for the item of delivery; the warranty period begins after the defect is repaired. For delivered parts that were not in operation due to defects, an ongoing warranty period is extended corresponding to the period of the operational interruption. The costs borne by the contractor when repairing defects also include the costs for packaging, shipment, and delivery, as well as the work involved in dismantling and installation, travel costs, and the repair of the defects at the client's premises.

### 13. Property rights

The contractor must ensure that no third-party property rights are violated when executing the contract or when delivering and using the delivered item or service. Upon the first written request, the contractor releases the client from third-party claims regarding possible property right violations.

### 14. Advertising material

Regarding advertising material, the contractor may only refer to business relationships with the client with the express consent of the client. The contractual parties undertake to treat all commercial or technical details that are not public and that become known to them through the business relationship as confidential. Subcontractors must also commit to confidentiality accordingly.

### 15. Cancellation and withdrawal

Irrespective of other cancellation and withdrawal rights, the client is entitled to terminate the contract or to withdraw from it if the contractor carries out actions within the meaning of §§ 333, 334 StGB (German Penal Code) (suspicions of granting an advantage, bribery). The client can also demand compensation from the contractor for all damages. The client can also withdraw from the contract or terminate the contract if insolvency proceedings or judicial settlement proceedings have been initiated against the contractor or if the contractor temporarily suspends its payments.

### 16. Safety regulations and procedural guidelines

For deliveries and services on the client's premises and spaces, the safety regulations and procedural guidelines of the client are to be observed, which in this case are an integral part of the contract.

### 17. Place of fulfilment and jurisdiction

The place of fulfilment for the contractor is the client's registered office or another place of use specified by the client. The place of jurisdiction is Hamburg, provided the contractor is a merchant.

### 18. Applicable law

The law of the Federal Republic of Germany applies. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG) do not apply. If the service was tendered on the basis of the VOL/A, the VOL/B will also apply. Besides that, the BGB also applies.

## **19. Final provisions**

Should individual provisions of the contract or these General Purchasing Conditions be ineffective, the contract as such and the remaining General Purchasing Conditions are still effective. This does not apply if adhering to the contract or the general terms and conditions would constitute an unreasonable hardship for either party.